

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: William MacLure	Team: Squad #16	CCRB Case #: 201604699	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 05/21/2016 2:45 PM, Sunday, 05/22/2016	Location of Incident: § 87(2)(b)	Precinct: 75	18 Mo. SOL 11/21/2017	EO SOL 11/21/2017	
Date/Time CV Reported Tue, 05/31/2016 8:00 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Tue, 05/31/2016 8:00 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Christopher Walsh	23571	951413	075 PCT
2. SGT Henry Daverin	03631	945645	075 PCT
3. CPT Roberto Melendez	00000	899587	075 PCT
4. POM Tony Cuoco	17359	950261	075 PCT

Officer(s)	Allegation	Investigator Recommendation
A.CPT Roberto Melendez	Abuse: On May 21, 2016, Captain Roberto Melendez authorized the search of § 87(2)(b) § 87(2)(b) in Brooklyn.	
B.CPT Roberto Melendez	Abuse: On May 21, 2016, Captain Roberto Melendez authorized the search of § 87(2)(b) § 87(2)(b) in Brooklyn.	
C.CPT Roberto Melendez	Abuse: On May 21, 2016, Captain Roberto Melendez authorized the search of § 87(2)(b) § 87(2)(b) in Brooklyn.	
D.POM Christopher Walsh	Abuse: On May 21, 2016, Police Officer Christopher Walsh entered and searched § 87(2)(b) § 87(2)(b) in Brooklyn.	
E.SGT Henry Daverin	Abuse: On May 21, 2016, Sergeant Henry Daverin entered and searched § 87(2)(b) § 87(2)(b) in Brooklyn.	
F.POM Tony Cuoco	Abuse: On May 21, 2016, Police Officer Tony Cuoco entered and searched § 87(2)(b) § 87(2)(b) in Brooklyn.	

Officer(s)	Allegation	Investigator Recommendation
G.CPT Roberto Melendez	Abuse: On May 22, 2016, Captain Roberto Melendez entered and searched § 87(2)(b) § 87(2)(b) in Brooklyn.	[REDACTED]
§ 87(2)(b)	§ 87(4-b), § 87(2)(g)	[REDACTED]

Case Summary

On May 31, 2016, § 87(2)(b) filed this complaint via telephone with the CCRB using the call processing system.

On May 21, 2016, at approximately 2:45 p.m., officers responded to calls for shots fired in front of § 87(2)(b) in Brooklyn. Capt. Roberto Melendez requested that ESU respond to the location and authorized ESU enter the § 87(2)(b) § 87(2)(b) and § 87(2)(b) apartments of § 87(2)(b) for a protective sweep (**Allegations A through C**). PO Christopher Walsh, Sgt. Henry Daverin, and PO Tony Cuoco responded to § 87(2)(b) and entered the § 87(2)(b) (**Allegations D through F**).

On May 22, 2016, at approximately 1:45 a.m., Capt. Melendez supervised the entry and search of the § 87(2)(b) of § 87(2)(b) (**Allegation G**).

§ 87(2)(g), § 87(4-b)

§ 87(2)(b)

§ 87(2)(b) Jr., § 87(2)(b) and § 87(2)(b) § 87(2)(b) and § 87(2)(b) were all arrested in regards to this incident (Board Reviews 01-06, respectively).

A UF-49 was prepared in regards to the shooting (Board Review 23).

There was no video footage of this incident.

§ 87(2)(b)

§ 87(2)(b)

This case was reassigned from Inv. Leanne Fornelli on August 13, 2016, upon her departure from the agency.

The age of this case exceeded 90 days due to delays in identifying subject officers. The subject officer was not interviewed until September 8, 2016, when this case was over three months old.

Mediation, Civil and Criminal Histories

- This case was not eligible for mediation because § 87(2)(b) and § 87(2)(b) were arrested as a result of this incident.

- § 87(2)(c)

§ 87(2)(c)

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Civilian and Officer CCRB Histories

- This was § 87(2)(b)'s first complaint filed with the CCRB (Board Review 08).
- This was § 87(2)(b)'s first complaint filed with the CCRB (Board Review 09).
- § 87(2)(b)
[REDACTED]
[REDACTED]
[REDACTED]
- § 87(2)(b) had no previous complaints with the CCRB (Board Review 25).
- Capt. Melendez has been a member of the NYPD for 25 years. Since 2003, Capt. Melendez has had 12 previous allegations against him, stemming from four different cases, with four substantiated allegations.
 - In case number 200409169, a stop and question allegation, a vehicle search allegation, a frisk allegation, and a search of person allegation were all substantiated and the CCRB recommended charges. The NYPD disposition for all substantiated allegations was no disciplinary action.
- PO Walsh has been a member of the NYPD for five years. PO Walsh has eight previous allegations stemming from two complaints with no substantiated allegations.
- Sgt. Daverin has been a member of the service for eight years. Sgt. Daverin has 46 previous allegations stemming from 17 complaints. Sgt. Daverin has two other open complaints pending against him, with three substantiated allegations.
 - In case number 201502623, a vehicle search allegation, a refusal to provide name and shield allegation, and a frisk allegation were all substantiated and command discipline A was recommended. The NYPD disposition was command discipline A.
 - § 87(2)(g), § 87(4-b)
[REDACTED]
[REDACTED]
 - Sgt. Daverin has had one previous allegation of premises entered and searched pleaded against him.
- PO Cuoco has been a member of the NYPD for five years. PO Cuoco has 7 previous allegations against him, none of which were substantiated.

Potential Issues

- § 87(2)(b) declined to participate in the investigation and therefore did not provide a statement regarding this incident.
- A copy of the search warrant was requested from the 75th Precinct, but the request was returned with a note that it was not on file at the stationhouse.

Findings and Recommendations

Explanation of Subject Officer Identification

- **Allegations A through C** were pleaded against Capt. Melendez because he called ESU and authorized the search of § 87(2)(b) [REDACTED]
- **Allegation G** was pleaded against Capt. Melendez because he was the highest ranking officer on scene during the execution of the search warrant.

Allegations not pleaded

- **Abuse of Authority – Refusal to Show Search Warrant:** A refusal to show search warrant allegation is not being pleaded because § 87(2)(b) and § 87(2)(b) requested to see a search warrant on May 21, 2016 before the officers had obtained one.
- **Abuse of Authority – Property Damage:** A property allegation was not pleaded because the property damage described was consistent with the execution of a no-knock search warrant.

Allegation A – Abuse of Authority: On May 21, 2016, Captain Roberto Melendez authorized the search of § 87(2)(b) § 87(2)(b) in Brooklyn.

Allegation B – Abuse of Authority: On May 21, 2016, Captain Roberto Melendez authorized the search of § 87(2)(b) § 87(2)(b) in Brooklyn.

Allegation C – Abuse of Authority: On May 21, 2016, Captain Roberto Melendez authorized the search of § 87(2)(b) § 87(2)(b) in Brooklyn.

§ 87(2)(b) was interviewed at the CCRB on June 8, 2016 (Board Review 11). § 87(2)(b) stated that on May 21, 2016, plainclothes and uniformed officers knocked on the door to his residence located at § 87(2)(b) § 87(2)(b) in Brooklyn, and asked him if he heard gunshots. § 87(2)(b) told them that he did not. Fifteen to twenty minutes later, officers instructed everyone to come outside of the apartment and sit across the street. At this time, eight to ten officers wearing riot gear, shields and helmets came out of the § 87(2)(b) apartment. The officers searched his residence.

§ 87(2)(b) was interviewed at the CCRB on July 12, 2016 (Board Review 12). § 87(2)(b) is the owner of § 87(2)(b) and her son, § 87(2)(b) Jr., lives in the § 87(2)(b) with § 87(2)(b) stated that officers entered all three apartments of § 87(2)(b) § 87(2)(b) said the entire block was blocked off and she was denied entrance into the § 87(2)(b) until May 22, 2016.

§ 87(2)(b) was interviewed at the CCRB on July 12, 2016 (Board Review 13). § 87(2)(b) was at her residence, located at § 87(2)(b) § 87(2)(b) with her two daughters and two nieces. Five or more uniformed officers in vests entered her apartment and told her that they had to exit the apartment for their safety due to an emergency.

Capt. Melendez was interviewed at the CCRB on September 29, 2016 (Board Review 14). After arriving at the location, Capt. Melendez learned that a witness who had heard the commotion from the shooting observed a male go into § 87(2)(b). At the time officers were not sure whether or not the male was connected with the shooting. Capt. Melendez requested that ESU respond to § 87(2)(b) to conduct a protective sweep of the location because the officers did not know whether or not the perpetrator was inside of § 87(2)(b). ESU entered the § 87(2)(b) and § 87(2)(b). Capt. Melendez did not specify whether or not ESU entered the § 87(2)(b) apartment.

The ESU truck report prepared in regards to this incident (Board Review 16) noted that crews responded to conduct an evidence search for two females that had been shot and that the search was conducted with negative results. ESU then evacuated the § 87(2)(b) and basement occupants and entered the § 87(2)(b) as per Capt. Melendez's request for a wellness check, which also yielded negative results.

The UF-49 prepared in connection with the shooting (Board Review 23) also noted that ESU was requested to respond to conduct a security sweep of § 87(2)(b) after a witness saw the perpetrator of the shooting flee into the location.

The courts have outlined three elements to determine whether exigent circumstances exist to justify entry without a warrant: 1) The police must have reasonable grounds to believe that there is an emergency at hand and an immediate need for their assistance for the protection of life or property. 2) The search must not be primarily motivated by intent to arrest and seize evidence. 3) There must be some reasonable basis, approximating to probable cause, to associate the emergency with the area to be searched. People v. Musto 966 N.Y.S.2d 263, 2013 N.Y. App. Div. (Board Review 17).

§ 87(2)(g)

Allegation D – On May 21, 2016, Abuse of Authority: Police Officer Christopher Walsh entered and searched § 87(2)(b) § 87(2)(b) in Brooklyn.

Allegation E – On May 21, 2016, Abuse of Authority: Sergeant Henry Daverin entered and searched § 87(2)(b) § 87(2)(b) in Brooklyn.

Allegation F – On May 21, 2016, Police Officer Tony Cuoco entered and searched § 87(2)(b) § 87(2)(b) in Brooklyn.

It is undisputed that § 87(2)(b) § 87(2)(b) was “frozen” when PO Walsh, Sgt. Daverin, and PO Cuoco arrived at the location, meaning that no one could go inside of the apartment until a search warrant was obtained. The apartment was given this designation because ESU sensed a strong odor of marijuana when they conducted the protective sweep. Therefore, the question at hand is whether or not PO Walsh, Sgt. Daverin, and PO Cuoco entered the location before obtaining a search warrant.

Capt. Melendez (Board Review 14) stated that after ESU confirmed that there was no one hurt inside the apartment, an officer stated that there was a strong odor of marijuana in the apartment. After learning of the strong odor of marijuana, the § 87(2)(b) was secured and frozen until a search warrant was obtained.

PO Walsh (Board Review 15) said that when ESU conducted the “AIDED and perpetrator” search, they sensed a strong odor of marijuana in the § 87(2)(b) PO Walsh did not remember who informed him of this. PO Walsh stated that, after he arrived at the location with Sgt. Daverin and PO Cuoco, they all entered § 87(2)(b) § 87(2)(b) When asked why he, Sgt. Daverin, and PO Cuoco entered the location, PO Walsh said, “Because as part of the anti-crime team we go to these types of jobs. And I was going to be the officer doing the search warrant.” The officers had not obtained a search warrant for the location at this time. PO Walsh was going to be the arresting officer and was responsible for drawing up the search

warrant. PO Walsh, PO Cuoco, and Sgt. Daverin entered the location so that they could obtain information to use when drafting the search warrant. When they went inside, there was still a strong odor of marijuana. After entering the officers made observations of marijuana and a rifle in plain view.

Sgt. Daverin was interviewed at the CCRB on October 7, 2016 (Board Review 18). Sgt. Daverin said that when he, PO Walsh, and PO Cuoco arrived at § 87(2)(b) the location was frozen. Sgt. Daverin denied entering § 87(2)(b) § 87(2)(b) before the PO Walsh obtained a warrant. Shortly after arriving at the location, PO Walsh told Sgt. Daverin that a quantity of marijuana and a rifle were observed in plain view. When asked how PO Walsh knew this, Sgt. Daverin responded saying that was a question for PO Walsh. When asked if PO Walsh went inside the § 87(2)(b) Sgt. Daverin repeated that that was a question for PO Walsh. Sgt. Daverin denied seeing any officers going inside of or coming out of § 87(2)(b) Sgt. Daverin denied ever ordering any officers to go inside § 87(2)(b)

PO Cuoco was interviewed at the CCRB on October 27, 2016 (Board Review 19). PO Cuoco also stated that the § 87(2)(b) was frozen when he, Sgt. Daverin, and PO Walsh arrived to the location. PO Cuoco said that he only entered § 87(2)(b) after PO Walsh obtained a search warrant.

As noted above, the courts have outlined three elements to determine whether exigent circumstances exist to justify entry without a warrant: 1) The police must have reasonable grounds to believe that there is an emergency at hand and an immediate need for their assistance for the protection of life or property. 2) The search must not be primarily motivated by intent to arrest and seize evidence. 3) There must be some reasonable basis, approximating to probable cause, to associate the emergency with the area to be searched. People v. Musto 966 N.Y.S.2d 263, 2013 N.Y. App. Div. (Board Review 17).

§ 87(2)(g)

§ 87(2)(g)

It is undisputed that, on May 22, 2016, officers entered and searched § 87(2)(b) in Brooklyn, based upon valid search warrant number § 87(2)(b) (Board Review 20) obtained by PO Walsh and signed by the Honorable § 87(2)(b). The search warrant had after hours and no knock exceptions. § 87(2)(g)

[illegible]

Investigator:	_____	_____	_____
	Signature	Print	Date
Squad Leader:	_____	_____	_____
	Title/Signature	Print	Date
Reviewer:	_____	_____	_____
	Title/Signature	Print	Date